

Post-Conviction Proceedings in “Automatic” Waiver Cases

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Part I — Juvenile Sentencing Hearings

23.1 Introduction

The prosecuting attorney, the juvenile, and the attorney for the juvenile must be advised on record immediately following conviction of the juvenile that a hearing will be conducted at sentencing, unless waived, to determine whether to sentence the juvenile as an adult or to place the juvenile on

juvenile probation and commit the juvenile to state wardship as though a delinquent. The court may announce the scheduled date of the hearing and, on request, must notify the victim of the juvenile sentencing hearing. MCR 6.931(C).

*See Chapter 24, Part IV.

The special dispositional hearing is not required if the circuit court has obtained jurisdiction via traditional waiver. MCR 6.901(B) and *People v Cosby*, 189 Mich App 461, 464 (1991).*

*See Section 22.8(C) for a discussion of this and related jurisdictional issues.

In *People v Veling*, 443 Mich 23, 42–43 (1993), the Michigan Supreme Court held that the circuit court does not lose jurisdiction to sentence an “automatically” waived juvenile if the juvenile is tried for an enumerated offense but convicted of a lesser-included offense or other offense that is not an enumerated offense.*

NOTE: The criteria to determine whether to sentence a juvenile as an adult contained in MCR 6.931(E)(3) have been superseded by those in MCL 769.1(1) and (3); MSA 28.1072(1) and (3), as amended by 1996 PA 247, effective January 1, 1997. The statutory amendments now require a court of general criminal jurisdiction to sentence a juvenile convicted of a certain subset of the “specified juvenile violations” as an adult. See Section 23.2, below. Other subrules of MCR 6.931, however, still govern procedure in juvenile sentencing hearings in circuit court.

23.2 Offenses That Require Adult Sentencing

MCL 769.1(1)(a)–(l); MSA 28.1072(1)(a)–(l), states that if the juvenile is convicted of the following subset of specified juvenile violations, the juvenile must be sentenced as an adult:

- (a) burning a dwelling house, MCL 750.72; MSA 28.267;
- (b) assault with intent to murder, MCL 750.83; MSA 28.278;
- (c) assault with intent to maim, MCL 750.86; MSA 28.281;
- (d) attempted murder, MCL 750.91; MSA 28.286;
- (e) conspiracy, MCL 750.157a; MSA 28.354(1), to commit murder;
- (f) solicitation, MCL 750.157b; MSA 28.354(2), to commit murder;
- (g) first-degree murder, MCL 750.316; MSA 28.548;
- (h) second-degree murder, MCL 750.317; MSA 28.549;
- (i) kidnapping, MCL 750.349; MSA 28.581;
- (j) first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2);

(k) armed robbery, MCL 750.529; MSA 28.797; and

(l) carjacking, MCL 750.529a; MSA 28.797(a).

23.3 Offenses That Do Not Require Adult Sentencing

MCL 769.1(3); MSA 28.1072(3), states that unless a juvenile is required to be sentenced in the same manner as an adult under MCL 769.1(1); MSA 28.1072(1), a judge of the court having jurisdiction over a juvenile shall conduct a hearing at the juvenile's sentencing to determine if the best interests of the public would be served by placing the juvenile on probation and committing the juvenile to a state institution or agency described in MCL 803.301 et seq.; MSA 25.399(51) et seq., or by imposing any other sentence provided by law for an adult offender.

Thus, where the juvenile is convicted of any of the following specified juvenile violations, a hearing must be held to determine whether the juvenile will be sentenced as an adult:

- F assault with intent to rob while armed, MCL 750.89; MSA 28.284;
- F bank, safe, or vault robbery, MCL 750.531; MSA 28.799;
- F first-degree home invasion, MCL 750.110a(2); MSA 28.305a(2), if armed with a dangerous weapon;
- F assault with intent to do great bodily harm, MCL 750.84; MSA 28.279, if armed with a dangerous weapon;
- F escape or attempted escape from a medium- or high-security juvenile facility operated by the Family Independence Agency, or a high-security facility operated by a private agency under contract with the Family Independence Agency, MCL 750.186a; MSA 28.383a;
- F any attempt, MCL 750.92; MSA 28.287, solicitation, MCL 750.157b; MSA 28.354(2), or conspiracy, MCL 750.157a; MSA 28.354(1), to commit a specified juvenile violation other than murder;
- F any lesser-included offense of the above offenses arising out of the same transaction; and
- F any other violation arising out of the same transaction if the juvenile is charged with one of the above offenses.

23.4 Sentencing Alternatives for Certain Major Controlled Substance Offenses

NOTE: There were several amendments made to the Controlled Substance Act in 1996 that were designed specifically for juveniles who are charged with major controlled substances offenses in designated proceedings and waiver proceedings. These amendments are discussed here. For information about controlled substance offense sentences that apply to both juveniles and adults, see *Managing a Trial Under the Controlled Substances Act*, Chapter 15 (MJJ, 1995).

A. Alternative Sentences for Juveniles Convicted of Delivery or Possession of 650 Grams or More of Schedule 1 or 2 Narcotics or Cocaine

MCL 769.1(5); MSA 28.1072(5), states that if a juvenile is convicted of a violation of or conspiracy to commit a violation of MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), or of MCL 333.7403(2)(a)(i); MSA 14.15(7403)(2)(a)(i) (manufacture, sale, delivery, possession with intent, or possession of more than 650 grams of a Schedule 1 or 2 narcotic or cocaine), the court shall determine whether the best interests of the public would be served by:

- F imposing the sentence provided by law for an adult offender (mandatory life imprisonment);
- F placing the individual on probation and committing the individual to a state institution or agency as provided in MCL 769.1(3); MSA 28.1072(3); or
- F imposing a sentence of imprisonment for any term of years but not less than 25 years, if the court determines by clear and convincing evidence that such a sentence would serve the best interests of the public. In making this determination, the court shall use the same criteria as listed in MCL 769.1(3); MSA 28.1072(3).*

*See Section 23.6, below, for a list of these criteria.

B. Alternative Sentences for Juveniles Convicted of Delivery or Possession of Less Than 650 Grams of Schedule 1 or 2 Narcotics or Cocaine

If the juvenile is convicted of a violation of MCL 333.7401(2)(a)(ii)–(iv); MSA 14.15(7401)(2)(a)(ii)–(iv), or MCL 333.7403(2)(a)(ii)–(iv); MSA 14.15(7403)(2)(a)(ii)–(iv), the court may depart from the mandatory minimum terms listed below if the juvenile has not previously been convicted of a felony or an assaultive crime, and has not been convicted of another felony or assaultive crime arising from the same transaction as the controlled substance violation. MCL

333.7401(4)(b); MSA 14.15(7401)(4)(b), and MCL 333.7403(3)(b); MSA 14.15(7403)(3)(b).

The controlled substance offenses covered by this alternative sentencing provision and their mandatory minimum terms are as follows:

- F Manufacture, creation, delivery, or possession with intent to manufacture, create, or deliver the following amounts of a Schedule 1 or 2 narcotic drug or cocaine:
 - 225 grams or more, but less than 650 grams. Not less than 20 years nor more than 30 years. MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii).
 - 50 grams or more, but less than 225 grams. Not less than 10 years nor more than 20 years. MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii).
 - Less than 50 grams. Not less than one year nor more than 20 years, and may be fined not more than \$25,000.00, *or* placed on probation for life. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv).
- F Possession of the following amounts of a Schedule 1 or 2 narcotic drug or cocaine:
 - 225 grams or more, but less than 650 grams. Not less than 20 years nor more than 30 years. MCL 333.7403(2)(a)(ii); MSA 14.15(7403)(2)(a)(ii).
 - 50 grams or more, but less than 225 grams. Not less than 10 years nor more than 20 years. MCL 333.7403(2)(a)(iii); MSA 14.15(7403)(2)(a)(iii).
 - 25 grams or more, but less than 50 grams. Not less than one year nor more than four years, and may be fined not more than \$25,000.00, *or* placed on probation for life. MCL 333.7403(2)(a)(iv); MSA 14.15(7403)(2)(a)(iv).

NOTE: It does not appear that the court also needs “substantial and compelling reasons” to depart from the mandatory minimum sentences listed above. See MCL 333.7401(4)(b); MSA 14.15(7401)(4)(b), and MCL 333.7403(3)(b); MSA 14.15(7403)(3)(b). See also *Managing a Trial Under the Controlled Substances Act*, Section 15.6 (MJI, 1995), for a discussion of what constitutes “substantial and compelling reasons” under these statutes.

As used in this section, assaultive crime means any of the following offenses:

- F assault and battery, MCL 750.81; MSA 28.276;

- F assault, infliction of serious injury, MCL 750.81a; MSA 28.276(1);
- F felonious assault, MCL 750.82; MSA 28.277;
- F assault with intent to murder, MCL 750.83; MSA 28.278;
- F assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279;
- F assault with intent to maim, MCL 750.86; MSA 28.281;
- F assault with intent to commit a felony, MCL 750.87; MSA 28.282;
- F assault with intent to rob while unarmed, MCL 750.88; MSA 28.283;
- F assault with intent to rob while armed, MCL 750.89; MSA 28.284;
- F sexual intercourse under pretext of medical treatment, MCL 750.90; MSA 28.285.

MCL 333.7401(5)(a); MSA 14.15(7401)(5)(a), and MCL 333.7403(4); MSA 14.15(7403)(4).

23.5 Purpose of Juvenile Sentencing Hearings

A “juvenile sentencing hearing” is conducted by the circuit court following a criminal conviction of a juvenile to determine whether the best interests of the public would be served by:

- F placing the juvenile on probation and committing the juvenile to a state institution or agency as described in the Youth Rehabilitation Services Act, or
- F imposing any other sentence provided by law for an adult offender.

MCL 769.1(3); MSA 28.1072(3).

NOTE 1: MCR 6.903(F) still includes the statutory language that existed prior to the 1996 amendment to MCL 769.1(3); MSA 28.1072(3). That is, the court rule states that the sentencing judge should consider the “best interests of the juvenile and the public,” whereas the amended statute states that the sentencing judge should only consider the “best interests of the public.” The standards in the statute, of course, supersede the standards in the court rule because the court rule standards are based on an earlier version of that same statute.

NOTE 2: The juvenile sentencing hearing in an “automatic” waiver case is more complex than a sentencing hearing for an adult. As explained in this chapter, several of the recent statutory changes have lessened the importance of the juvenile sentencing hearing. Hearings are now required for only some of the offenses for which “automatic” waiver is available; the court is no longer required to consider the best interest of the juvenile during juvenile sentencing hearings and must place greater emphasis on the seriousness of the offense and the juvenile’s record; and, in cases where the juvenile is committed to state wardship, the juvenile may be sentenced as an adult at the end of his or her probationary period, at a “final review hearing.” Nonetheless, the basic purpose of the juvenile sentencing hearing has remained the same. That is, the court must decide whether the juvenile should be sent to the “adult system” or the “juvenile system.”

Features of the “juvenile system” include:

- A structured environment, with a focus on rehabilitation (juveniles are forced to attend school and therapy, and “Positive Peer Culture” and “Guided Group Interaction” are the primary treatment modalities);
- Only the most secure institutions will generally be available to the children involved in automatic waiver proceedings (e.g., Maxey Boys Training School);
- More direct control by the court over the juvenile’s ultimate release.

Features of “adult system” include:

- A structured environment, with a focus on punishment;
- Programming is generally not available until the end of an offender's sentence;
- Programming in the adult system is voluntary;
- More varied educational programming is available in the adult system, from basic education classes to college courses;
- Therapeutic services (e.g., impulse control and sex offender therapy) are available on a much smaller scale.

23.6 Criteria to Determine Whether to Impose Adult Sentence at Juvenile Sentencing Hearings

To determine whether the best interests of the public would be served by imposing an adult sentence or placing the juvenile on probation and committing the juvenile to a state institution or agency, the court must consider all of the following, giving greater weight to the seriousness of the alleged offense and the juvenile’s prior record of delinquency:

- (a) the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines,* the use of a firearm or other dangerous weapon, and the effect upon any victim;
- (b) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile’s participation in planning and carrying out the offense and the existence of any

*See Michigan Sentencing Guidelines (2d ed, 1988), and Section 20.9, Note, on the status of legislative sentencing guidelines.

aggravating or mitigating factors recognized by the sentencing guidelines;

(c) the juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;

(d) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;

(e) the adequacy of the punishment or programming available in the juvenile justice system; and

(f) the dispositional options available for the juvenile.

MCL 769.1(3)(a)–(f); MSA 28.1072(3)(a)–(f).

NOTE: For cases construing the pre-1996 amendment criteria in MCR 6.931(E)(3)(a)–(f), see *People v Cheeks*, 216 Mich App 470 (1996), *People v Perry*, 218 Mich App 520, 539–45 (1996), *People v Brown*, 205 Mich App 503, 505 (1994), *People v Lyons (On Remand)*, 203 Mich App 465, 468–69 (1994), *People v Miller*, 199 Mich App 609 (1993), *People v Black*, 203 Mich App 428, 430–31 (1994), *People v Stone*, 195 Mich App 600, 607 (1992), *People v Passeno*, 195 Mich App 91, 101–02 (1992), and *People v Buck*, 197 Mich App 404, 428–30 (1992), rev'd on other grounds sub nom *People v Holcomb*, 444 Mich 853 (1993) (proportionality standard, announced in *People v Milbourn*, 435 Mich 630 (1990), applies to ultimate decision to sentence juvenile as adult).

*See Sections 20.4–20.14 for a detailed discussion of the presentence reports required in designated proceedings. These reports are also required in “automatic” waiver proceedings.

23.7 Reports at Juvenile Sentencing Hearings*

The court must give the prosecuting attorney, the juvenile, and the juvenile's attorney an opportunity to review the presentence report and the social report prior to the juvenile sentencing hearing. The court may exempt information from the reports as provided in MCL 771.14; MSA 28.1144, and MCL 771.14a; MSA 28.1144(1). MCR 6.931(D). The social report is the written report prepared by the Family Independence Agency under MCL 803.224; MSA 25.399(224), of the Juvenile Facilities Act. MCR 6.903(K).

A. Contents of Social Reports

Prior to a juvenile sentencing hearing, the Family Independence Agency must inquire into the antecedents, character, and circumstances of the juvenile, and must report in writing to the court as provided in the Juvenile Facilities Act. MCL 771.14a; MSA 28.1144(1). The Juvenile Facilities Act, in turn, requires the following information be provided to the court:

(a) an evaluation of and a prognosis for the juvenile's adjustment in the community based on factual information contained in the report;

(b) a recommendation as to whether the juvenile is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures; and

(c) a recommendation as to what disposition is in the best interests of the public welfare and the protection of public security.

MCL 803.224(2)(a)–(c); MSA 25.399(224)(2)(a)–(c).

NOTE: A determination of the juvenile's mental maturity, which is crucial to determining how well the juvenile will adapt to the different treatment modalities of the juvenile and adult systems, generally requires a battery of tests. Such tests may be administered by examiners at the juvenile court (now the Family Division). Note, however, that a juvenile's mental maturity is not a criterion used to decide whether to sentence or place the juvenile on probation.

B. Information That May Be Exempted From Disclosure

MCL 771.14a(2); MSA 28.1144(1)(2), states that the court may exempt from disclosure in a report under this section information or a diagnostic opinion which might seriously disrupt a program of rehabilitation or sources of information obtained on a promise of confidentiality. If a part of the report is not disclosed, the court must state on the record its reasons for its action and inform the juvenile and his or her attorney that information has not been disclosed. The action of the court in exempting information is subject to appellate review. Information or a diagnostic opinion exempted from disclosure pursuant to this subsection must be specifically noted in the report.

23.8 Rules of Evidence at Juvenile Sentencing Hearings

The rules of evidence do not apply at a juvenile sentencing hearing. MCL 769.1(3); MSA 28.1072(3), and MCR 6.931(E)(1). All relevant and material evidence may be received by the court and relied upon to the extent of its probative value, even though such evidence may not be admissible at trial. The court must receive and consider the presentence report prepared by the probation officer and the social report prepared by the Family Independence Agency. MCR 6.931(E)(1).

23.9 Burden and Standard of Proof at Juvenile Sentencing Hearings

*See Section 23.4, above.

Except for controlled substance offenses allowing for imposition of alternative sentences,* the court must sentence the juvenile in the same manner as an adult unless the court determines by a preponderance of the evidence that the interests of the public would be best served by placing the juvenile on probation and committing the juvenile to a state institution or agency described in the Youth Rehabilitation Services Act. MCL 769.1(3); MSA 28.1072(3).

NOTE: MCR 6.931(E)(2) assigns the prosecutor the burden of proof and requires the court to consider whether the best interests of *both* the juvenile and public would be served by imposing an adult sentence. As noted above, the court rules in Subchapter 6.900 have not been amended to reflect the 1996 legislative changes to MCL 769.1; MSA 28.1072.

23.10 Waivers of Juvenile Sentencing Hearings

*See also Sections 17.6–17.7 for discussion of plea agreements in criminal cases.

MCL 769.1(4); MSA 28.1072(4), provides that the court may waive the sentencing hearing under MCL 769.1(3); MSA 28.1072(3) with the consent of the prosecutor and the defendant. If the court waives the sentencing hearing, the court may place the juvenile on probation and commit the juvenile to a state institution or agency, but shall not impose any other sentence provided by law for an adult offender. See also MCR 6.931(B) (no juvenile sentencing hearing required if parties agree not to sentence juvenile as an adult).*

23.11 Required Findings of Court at Juvenile Sentencing Hearings*

*See Chapter 20 for detailed information on sentencing in criminal cases.

MCL 769.1(6); MSA 28.1072(6), and MCR 6.931(E)(4) require the court to state on the record its findings of fact and conclusions of law forming the basis for its decision under MCL 769.1(3); MSA 28.1072(3), to place the juvenile on juvenile probation and commit the juvenile to a state agency, or to sentence the juvenile as an adult.

The court must make detailed findings concerning the statutory factors and weigh the relevant factors in a meaningful way at the sentencing hearing. *People v Hazzard*, 206 Mich App 658, 660–61 (1994).

23.12 Orders for Restitution

*See Section 20.33(A)–(N) for a detailed discussion of the restitution requirements of these statutes.

Restitution is authorized under MCL 769.1a; MSA 28.1073, of the Code of Criminal Procedure, and MCL 780.766; MSA 28.1287(766), of the Crime Victim’s Rights Act.* See also MCL 771.3; MSA 28.1133 (restitution as a condition of adult probation).

NOTE: The Crime Victim’s Rights Act, MCL 780.751–780.775; MSA 28.1287(751)–28.1287(775), establishes rights of victims of felonies or offenses punishable by imprisonment for more than one year. See also Const 1963, art 1, § 24. MCL 780.752(1)(d); MSA 28.1287(752)(1)(d), defines a juvenile as a person within the jurisdiction of the circuit court under MCL 600.606; MSA 27A.606 (“automatic” waiver). Thus, the act applies only to juveniles when the prosecuting attorney has chosen to file a complaint and warrant in Criminal Division alleging a specified juvenile violation instead of filing a petition in the Family Division.

23.13 Crime Victims Rights Fund Assessments

MCL 780.905(1); MSA 28.1287(905)(1), states that the court shall order each person convicted of a felony to pay an assessment of \$60.00 and each person convicted of a serious misdemeanor or a specified misdemeanor to pay an assessment of \$50.00. The court shall order a defendant to pay only one assessment under this subsection per criminal case. Payment of the assessment shall be a condition of a parole order entered under MCL 791.236; MSA 28.2306.

23.14 Required Samples for DNA Profiling

A state ward under the jurisdiction of the Family Independence Agency for a violation of an enumerated offense shall not be placed in a community placement of any kind and shall not be discharged from state wardship until he or she has provided samples for chemical testing for DNA identification profiling or a determination of the sample’s genetic markers, and has provided samples for a determination of his or her secretor status.*

*See Section 4.12 for a detailed discussion of this requirement.

23.15 Additional Orders and Notices

Upon conviction, the juvenile may be required to:

- F register as a sex offender, and*
- F submit to testing for infectious diseases.*

*See Section 4.11.

*See Section 4.13(B).

The court clerk must also send a copy of the judgment of sentence to the Michigan State Police Central Records Division to create a criminal history record. MCL 769.16a; MSA 28.1086(1).

23.16 Special Requirements When Court Decides to Commit Juvenile to State Wardship

*See Form CC 236.

“State wardship” means the care and control of a juvenile up to his or her 21st birthday by an institution or agency within or under the supervision of the Family Independence Agency, as provided in the Youth Rehabilitation Services Act, MCL 803.301 et seq.; MSA 25.399(51) et seq. See also MCL 803.302(b)(ii); MSA 25.399(52)(b)(ii) (definition of “state ward”). Juveniles are made state wards on the basis of a court order of juvenile probation and commitment pursuant to MCL 769.1(3) or (4); MSA 28.1072(3) or (4).*

If the court retains jurisdiction over the juvenile, places the juvenile on juvenile probation, and commits the juvenile to state wardship, the court must comply with Subrules (1) through (11) of MCR 6.931(F).

A. Reimbursement for Cost of Care and Services

*See Form CC 236.

The judgment entered by the court must contain a provision for reimbursement by the juvenile or those responsible for the juvenile’s support, or both, for the cost of care and services pursuant to MCL 769.1(7); MSA 28.1072(7).* An order assessing such cost against a person responsible for the support of the juvenile shall not be binding on the person unless an opportunity for a hearing has been given and until a copy of the order is served on the person, personally or by first-class mail to the person’s last-known address. MCR 6.931(F)(1) and MCL 769.1(9); MSA 28.1072(9).

F Amount of Reimbursement and Duration of Order

The amount of reimbursement ordered must be reasonable, taking into account both the income and resources of the juvenile and those responsible for the juvenile’s support. The amount may be based upon the guidelines and model schedule prepared by the State Court Administrator under MCL 712A.18(6); MSA 27.3178(598.18)(6). The reimbursement provision shall apply during the entire period the juvenile remains in care outside the juvenile’s own home and under court supervision. MCL 769.1(7); MSA 28.1072(7).

See also *In re Brzezinski*, 454 Mich 889 (1997), reversing by summary judgment the Court of Appeals and adopting the dissent of Griffin, PJ, at 214 Mich App 652, 677 (1995). In *Brzezinski*, the Court interpreted the reimbursement provisions in MCL 712A.18(2); MSA 27.3178(598.18)(2), and concluded that the juvenile’s parents were not required to reimburse the state for the entire cost of placing the juvenile outside of his or her home. Instead, the amount ordered by the court need only be reasonable, considering the criteria enumerated in the statute.

F Collection and Disbursement of Amounts Collected

The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported

to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from care outside the juvenile's own home and under court supervision. Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. MCL 769.1(7); MSA 28.1072(7).

The balance of all amounts collected pursuant to an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under state or court supervision. MCL 769.1(7); MSA 28.1072(7).

The court may also collect benefits paid by the government of the United States for the cost of care of the juvenile. MCL 769.1(7); MSA 28.1072(7).

Money collected for juveniles placed with or committed to the Family Independence Agency shall be accounted for and reported on an individual basis. MCL 769.1(7); MSA 28.1072(7).

F Delinquent Accounts

In cases of delinquent accounts, the court may also enter an order to intercept state tax refunds or the federal income tax refund of a child, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. MCL 769.1(7); MSA 28.1072(7). The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. *Id.*

The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount. MCL 769.1(7); MSA 28.1072(7).

F Reimbursement of Attorney Fees

If the court appoints an attorney to represent a juvenile, an order entered under this section may require the juvenile or person responsible for the juvenile's support, or both, to reimburse the court for attorney fees. MCL 769.1(8); MSA 28.1072(8).

B. Advice Concerning Probation Revocation

The court must advise the juvenile at sentencing that if the juvenile, while on probation, is convicted of a felony or a misdemeanor punishable by more than one year's imprisonment, the court must

revoke juvenile probation and sentence the juvenile to a term of years in prison not to exceed the penalty that might have been imposed for the offense for which the juvenile was originally convicted. MCR 6.931(F)(2).

A defendant who is not advised of the ramifications of a subsequent conviction is not afforded due process and cannot thereafter have his juvenile probation revoked for failure to comply with the condition of probation requiring mandatory revocation and resentencing upon conviction of a felony or misdemeanor punishable by more than one year in prison. *People v Stanley*, 207 Mich App 300, 307 (1994), and *People v Valentin*, 220 Mich App 401, 405–06 (1996).

C. Records and Reports That Must Be Sent to Juvenile and Family Independence Agency

The court must assure that the juvenile receives a copy of the social report, and must send a copy of the order and the written opinion or transcript of the findings and conclusions of law to the Family Independence Agency. MCR 6.931(F)(3)–(4).

D. Limitations on Juvenile Probation*

The court shall not do any of the following:

- F place the juvenile on deferred sentencing as provided in MCL 771.1(2); MSA 28.1131(2). MCR 6.931(F)(5);
- F place the juvenile on lifetime probation for a conviction of a controlled substance violation as provided in MCL 771.1(3); MSA 28.1131(3). MCR 6.931(F)(6);
- F require as a condition of juvenile probation that the juvenile report to a Department of Corrections probation officer. MCR 6.931(F)(8);
- F as a condition of juvenile probation, impose jail time against the juvenile except as provided in MCR 6.933(B)(2)(g). MCR 6.931(F)(9);*
- F commit the juvenile to the Department of Corrections for failing to comply with a restitution order. MCR 6.931(F)(10); or
- F place the juvenile in a Department of Corrections probation camp for one year as provided in MCL 771.3a(1); MSA 28.1133(1). MCR 6.931(F)(11).

In addition, the five-year limit on the term of probation for an adult offender does not apply. MCR 6.931(F)(7).

*See Section 23.21 for a discussion of juvenile probation revocation.

*See Section 23.21(B), below (jail time for probation violation).

Part II — Progress and Commitment Reviews for Juveniles Committed to State Wardship

23.17 Semi-Annual Progress Reviews of Court-Committed Juveniles

A. Retention of Jurisdiction

If a juvenile is placed on probation and committed to a state institution or agency, the court retains jurisdiction over the juvenile while the juvenile is on probation and committed to that state institution or agency. MCL 769.1(10); MSA 28.1072(10).

B. Time Requirements for Progress Reviews

If the court has retained jurisdiction over a juvenile under MCL 769.1(10); MSA 28.1072(10), the court must conduct an annual review of the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in that placement. In conducting this review, the court must examine the juvenile's annual report prepared pursuant to MCL 803.223; MSA 25.399(223), of the Juvenile Facilities Act. The court may order changes in the juvenile's placement or treatment plan based on the review. MCL 769.1(11); MSA 28.1072(11).

In addition to annual reviews, the court must also conduct semi-annual progress reviews of all juveniles who have been placed on juvenile probation and committed to state wardship. MCR 6.935(B). Progress reviews must occur 182 days after entry of the initial order and semi-annually thereafter. MCR 6.935(B).

C. Reports for Progress Reviews

The court must examine the progress review reports prepared by the Family Independence Agency covering placement and services being provided the juvenile, and the progress of the juvenile. MCR 6.935(C).

D. Required Hearings for Progress Reviews

Unless the court orders a more restrictive placement or treatment plan, there is no requirement that the court hold a hearing when conducting a progress review for a court-committed juvenile pursuant to MCR 6.935(B).

However, MCR 6.935(D) provides that if the court does order a more restrictive placement or treatment plan, then the court must conduct a review hearing that meets the requirements of MCR 6.937.*

*See Section 23.18, below, for a summary of these requirements.

23.18 Commitment Review Hearings at Age 19 for Court-Committed Juveniles

The court must conduct a review *hearing* to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. If the court determines that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued or the court may commit the juvenile to the department of corrections. MCL 769.1b(1); MSA 28.1072(2)(1), and MCR 6.903(A).

A. Time Requirements for Commitment Review Hearings

A review hearing must be scheduled and held unless adjourned for good cause as near as possible to, but before, the juvenile's nineteenth birthday. MCL 769.1b(2); MSA 28.1073(1)(2). MCR 6.937(A) states that a review hearing must be held within 42 days before the juvenile turns age 19.

Failure to hold the required commitment review hearing within 42 days of the juvenile's 19th birthday violated applicable statutes and court rules but did not deprive the court of jurisdiction to sentence the juvenile for a probation violation, where jurisdiction had been continued until the juvenile reached age 21, and where revocation proceedings had begun before the period of probation expired. *People v Valentin*, 220 Mich App 401, 406–08 (1996).

B. Notice Requirements for Commitment Review Hearings

The Family Independence Agency or the agency, facility, or institution to which the juvenile has been committed must advise the court at least 91 days before the juvenile's 19th birthday of the need to schedule a commitment review hearing. MCR 6.937(A)(1).

Not less than 14 days before a review hearing is to be conducted, the prosecuting attorney, juvenile, the agency or superintendent of the facility to which the juvenile has been committed, and, if addresses are known, the juvenile's parent or guardian shall be notified by the court. The notice must state that the court may extend jurisdiction over the juvenile and must advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. MCL 769.1b(3); MSA 28.1073(1)(3), and MCR 6.937(A)(1).

C. Appointment of Counsel at Commitment Review Hearings

If legal counsel has not been waived by the juvenile pursuant to MCR 6.905(C), or if counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be

assessed are financially able to comply. MCL 769.1b(3); MSA 28.1073(1)(3), and MCR 6.937(A)(2).

D. Reports at Commitment Review Hearings

The state institution or agency charged with the care of the juvenile must prepare commitment reports as provided in MCL 803.225; MSA 25.399(225), of the Juvenile Facilities Act. MCL 769.1b(4); MSA 28.1073(1)(4), and MCR 6.903(B).

A commitment report must contain all of the following:

- (a) the services and programs currently being utilized by, or offered to, the juvenile and the juvenile's participation in those services and programs;
- (b) where the juvenile currently resides and the juvenile's behavior in his or her current placement;
- (c) the juvenile's efforts toward rehabilitation; and
- (d) recommendations for the juvenile's release or continued custody.

MCL 803.225(1)(a)–(d); MSA 25.399(225)(1)(a)–(d).

MCL 803.225(3); MSA 25.399(225)(3), allows the report created pursuant to MCL 803.223; MSA 25.399(223), for purposes of annual reviews to be combined with a commitment review report.

E. Burden and Standard of Proof at Commitment Review Hearings

The prosecutor must demonstrate by a preponderance of the evidence that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety. The rules of evidence do not apply at the hearing. MCR 6.937(A)(3).

NOTE: Assigning the burden of proof to the prosecuting attorney at commitment review hearings in “automatic” waiver cases differs from the procedure used in such hearings in delinquency cases, where the juvenile has the burden of proof. See Section 15.7(G).

F. Factors to Consider at Commitment Review Hearings

In determining whether the juvenile has been rehabilitated or still presents a serious risk to public safety, the court shall consider the following:

- (a) the extent and nature of the juvenile's participation in education, counseling, or work programs;
- (b) the juvenile's willingness to accept responsibility for prior behavior;
- (c) the juvenile's behavior in his or her current placement;
- (d) the prior record and character of the juvenile and his or her physical and mental maturity;
- (e) the juvenile's potential for violent conduct as demonstrated by prior behavior;
- (f) the recommendations of the state institution or agency charged with the juvenile's care for the juvenile's release or continued custody; and
- (g) other information the prosecuting attorney or juvenile may submit.

MCL 769.1b(1)(a)–(g); MSA 28.1073(1)(1)(a)–(g), and MCR 6.937(A)(3)(a)–(g).

G. Credit for Time Served on Probation

If a sentence is imposed, the juvenile must receive credit for the period of time served on probation and committed to a state agency or institution. MCL 769.1b(7); MSA 28.1073(1)(7).*

*See the Notes to Sections 21.11 and 21.15 for a case construing this provision.

23.19 Final Review Hearings at End of Juvenile's Probation

The court must conduct a final review of the juvenile's probation and commitment not less than 3 months before the end of the period that the juvenile is on probation and committed to the state institution or agency. If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose the sentence. MCL 769.1b(5); MSA 28.1073(1)(5).

A. Notice Requirements for Final Review Hearings

Not less than 14 days before a final review hearing is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian must be notified. The notice must state that the court may impose a sentence upon the juvenile and must advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. MCL 769.1b(6); MSA 28.1073(1)(6).

B. Appointment of Counsel for Final Review Hearings

If legal counsel has not been retained or appointed to represent the juvenile, the court must appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply. MCL 769.1b(6); MSA 28.1073(1)(6). See MCR 6.905(C) (waiver of counsel).

C. Factors to Consider at Final Review Hearings

In determining whether the best interests of the public would be served by imposing sentence, the court shall consider the following:

- F the extent and nature of the juvenile's participation in education, counseling, or work programs;
- F the juvenile's willingness to accept responsibility for prior behavior;
- F the juvenile's behavior in his or her current placement;
- F the prior record and character of the juvenile and his or her physical and mental maturity;
- F the juvenile's potential for violent conduct as demonstrated by prior behavior;
- F the recommendations of the state institution or agency charged with the juvenile's care for the juvenile's release or continued custody;
- F the effect of treatment on the juvenile's rehabilitation;
- F whether the juvenile is likely to be dangerous to the public if released;
- F the best interests of the public welfare and the protection of public security; and
- F other information the prosecuting attorney or juvenile may submit.

MCL 769.1b(5)(a)–(c); MSA 28.1073(1)(5)(a)–(c).

D. Credit for Time Served on Probation

If a sentence is imposed, the juvenile must receive credit for the period of time served on probation and committed to a state agency or institution. MCL 769.1b(7); MSA 28.1073(1)(7).*

*See the Notes to Sections 21.11 and 21.15 for a case construing this provision.

23.20 Commitment Review Hearings Requested by State Institution or Agency

If the state institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and that the juvenile does not present a serious risk to public safety, the state institution or agency may petition the court to conduct a review hearing at any time before the juvenile becomes 19 years of age or, if the court has continued jurisdiction under MCL 769.1b(1); MSA 28.1073(1), at any time before the juvenile becomes 21 years of age. MCL 769.1b(2); MSA 28.1073(1)(2), and MCR 6.937(B).

The court may release the juvenile upon a showing by a preponderance of the evidence that the juvenile has been rehabilitated and is not a risk to public safety. The notice provision under MCR 6.937(A)(1) applies, except for the requirement that the notice indicate that jurisdiction may be extended over the juvenile until age 21. The rules of evidence do not apply at such hearings, and the court must appoint an attorney to represent the juvenile unless counsel has been retained or the right to counsel waived. MCR 6.937(B).

The institution or agency may also request that the juvenile be moved to a more restrictive placement or treatment program. The court may order such a transfer, but only after notice and an opportunity to be heard. MCR 6.937(B).

23.21 Juvenile Probation Violations

*See Monograph 7, *Probation Revocation* (MJI, 1992).

When a juvenile who was placed on juvenile probation and committed to state wardship is alleged to have violated juvenile probation, the court must proceed as provided in MCR 6.445(A)–(F). MCR 6.933(A).*

A. Mandatory Revocation for Commission of a Felony

If the court finds that the juvenile has violated juvenile probation by being convicted of a felony or a misdemeanor punishable by more than one year's imprisonment, the court must revoke probation and order the juvenile committed to the Department of Corrections for *a term of years* not to exceed the penalty that could have been imposed for the offense that led to the probation. The court in imposing sentence shall grant credit against the sentence as required by law. MCL 771.7(1); MSA 28.1137(1), and MCR 6.933(B)(1) (emphasis added).

A juvenile who is placed on probation and committed to state wardship for manufacture, delivery, or possession with intent to deliver 650 grams or more of a controlled substance, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), may be resented only to *a term of years*, not to a non-parolable life sentence as mandated for adults by the controlled substance statute, or to a parolable life sentence, following mandatory revocation of probation for commission of a subsequent felony. *People v Valentin*, 220 Mich App 401, 408–16 (1996), aff'd ___ Mich ___ (1998).

Similarly, the literal language of MCL 771.7(1); MSA 28.1137(1), upon which MCR 6.933 is based, indicates that a juvenile convicted of first-degree murder who violates probation can only be sentenced for a term of years, thus prohibiting a sentence of nonparolable life. See MCR 6.933(B)(1).

A defendant who is not advised of the ramifications of a subsequent conviction is not afforded due process and cannot thereafter have his juvenile probation revoked for failure to comply with the condition of probation requiring mandatory revocation and resentencing upon conviction of a felony or misdemeanor punishable by more than one year in prison. *People v Stanley*, 207 Mich App 300, 307 (1994), and *People v Valentin*, 220 Mich App 401, 405–06 (1996).*

If the court revokes juvenile probation pursuant to MCR 6.933(B)(1), the court must receive an updated presentence report and comply with MCR 6.445(G) before it imposes a prison sentence on the juvenile. MCR 6.933(B)(3). MCR 6.445(G) requires the court to disclose the presentence report before sentencing pursuant to MCR 6.425(B), and to comply with the procedures for sentencing hearings in MCR 6.425(D)(2)–(3).*

The juvenile may appeal as of right from the imposition of a sentence of incarceration after a finding of juvenile probation violation. MCR 6.933(C).*

*See Section 23.16(B), above, for required advice concerning probation revocation.

*See Section 20.14 and Chapter 20, Part III.

*See Section 25.6 for a discussion of appeals in “automatic” waiver cases.

B. Continuation of Probation for Other Violations

If the court finds that the juvenile has violated juvenile probation other than as provided in MCR 6.933(B)(1), the juvenile must be continued on juvenile probation and remain under state wardship. However, the court may order:

- (a) a change of placement;
- (b) restitution;
- (c) community service;
- (d) substance abuse counselling;
- (e) mental health counselling;
- (f) participation in a vocational-technical education program;
- (g) incarceration in a county jail for not more than 30 days; and
- (h) any other participation or performance as the court considers necessary.

MCR 6.933(B)(2)(a)–(h).

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*See Section 3.11 for a discussion of places of detention in “automatic” waiver cases.

If the court orders incarceration in county jail, and if the juvenile is under 17 years of age, the juvenile must be placed separately from adult prisoners as required by law. MCR 6.933(B)(2).*

23.22 Discharge From State Wardship

*See Sections 23.18 – 23.19 for a discussion of review hearings at which the court decides whether to impose sentence on a juvenile initially committed as a state ward.

If the juvenile was committed as a state ward under MCL 769.1; MSA 28.1072, the juvenile shall remain a state ward until released with the approval of the court of general criminal jurisdiction under MCL 769.1b; MSA 28.1073(2). The juvenile shall be automatically discharged from state wardship upon reaching the age of 21 unless the court imposes sentence under MCL 769.1b; MSA 27.1073(2), in which case the juvenile must be discharged from state wardship and committed to the Department of Corrections under the court’s order. MCL 803.307(1)(c), 803.307(2), and 803.307(4); MSA 25.399(57)(1)(c), 25.399(57)(2), and 25.399(57)(4).*